

REMARKS

Claims 11, 16, 19, 23, 24, 27, 29, 31, 32, 34 -38 are presented for examination. In the outstanding Office Action mailed 19 June 2009 all of the pending claims were finally rejected. Claims 11, 13, 16, 19, 23-24, 27, 29 and 31-32 were again rejected both under Section 101 and Section 103.

With regard to the rejection of the claims under Section 101, applicants do not understand why the rejection has not been removed. The following remarks in support of removal do not appear to have been addressed in the final office action. The Examiner is asked to either remove the rejection or to provide a full and complete explanation as to why the rejection under Section 101 should not be removed.

In presenting the rejection under Section 101 in the prior, non-final office action, the Examiner provided an interpretation of the subject matter (formerly in claim 12) and placed in claims 11 and 29 concerning a connection to a communication network or a connection providing direct access to the real-time communication level of a real-time Ethernet. The amendment was made because the prior final office action made of record an interpretation of "web server" as meaning a computer program instead of a computer that runs a computer program. Rather than argue over the intended meaning, applicants amended each of the independent claims in order to overcome this rejection. However, the thought that an automation system, or a programmable logic controller is or could be no more than software is without support as one cannot enable such functionality without hardware. Consequently, the prior amendment was submitted to provide further basis to overcome the rejection under Section 101. However, in the non-final office action the Examiner then took the position that although a web server may comprise a connection to a communication network, this might not at all involve hardware. Somehow the Examiner has concluded that a "logical" connection may be effected without hardware. Consequently the Examiner was requested to provide support via an example as to how one might effect even a logical connection between a server and a network without a physical connection. It is submitted that the rejection is in error and should be removed.

Moreover, to further define subject matter that more surely satisfies the requirements of Section 101, claims 11 and 29 were further amended to expressly recite that the server is enabled

to control at least one automation device via connection through the expansion module to one or more automation devices. The at least one automation device is taken from the group consisting of a computer numerical control device, a valve and a drive. Based on the above argument and the amendment to claims 11 and 29 the claims clearly satisfy the requirements of Section 101. Removal of the rejection was requested. There is no apparent basis to maintain any rejection under Section 101 and it is improper for the Examiner to not respond to the above argument and related amendments. Removal of the rejection is again requested. If the Examiner refuses, the Examiner must at least provide further explanation to justify the rejection.

With regard to the continued rejection of the claims under Section 103 based on the combination of Swales (U.S. 6,321,272) in view of Lindner (U.S. 6,640,140), the Examiner has provided a response to applicants' arguments, but applicants do not believe that the citations from the Swales reference (U.S. 6,321,272) support the rejection. Specifically, the rejection cites Swales at col. 1, lines 56-61 and col. 4, lines 6-7 for a reading of the following recitation from claim 15:

A web server comprising software modules ... wherein Internet protocols are provided for communication between the software modules ...”

A similar recitation is in claim 29. The outstanding Office Action has acknowledged the applicants' contention that claims 11 and 29 require communication between software modules as well as communication between software modules and components outside the web server. At most, the citations from Swales might be supportive for disclosure of communication between a software module and a component outside of the web server, but nothing in the citation supports provision of

“... Internet protocols ... for communication between the software modules ...”

In the absence of a reference disclosing such communication between such software modules of the same web server using the Internet Protocol, it is not possible to provide a prima facie case of obviousness. The claimed subject matter must be found somewhere in the prior art and there must be a motivation to combine the references in order to render the combination obvious.

Although the final office action expresses disagreement, it appears to be error based on failure to read the claimed subject matter "... Internet protocols ... for communication between the software modules ..." on the prior art. In fact, it is not possible to even reconstruct this feature from the prior art.

All of the claimed elements must be found in the prior art and the rejection cannot be a hindsight reconstruction. For at least these reasons the argument for rejecting the claims under Section 103 is again traversed and the claims should be found non-obvious.

If the Examiner still disagrees with the above argument, the Examiner is requested to carry the burden of providing a prima facie case of obviousness. The Examiner must withdraw the rejection or provide full and complete support for a prima facie case of obviousness.

Conclusion

For all of the above reasons all of the rejections should be removed and the application should be passed to allowance. The Commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, including the fees specified in 37 C.F.R. §§ 1.16 (c), 1.17(a)(1) and 1.20(d), or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

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